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United States District Court
Eastern District of California

Michael Huftile,
Plaintiff, Civ. No. S 03-0585 DFL PAN P
vs. Order on Request for Counsel
Val G. Farmer,
Defendant.

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Plaintiff is a civil detainee proceeding pro se and in forma pauperis in a civil rights action. Plaintiff moved May 24, 2004, for appointment of counsel.

In proceedings that do not threaten a litigant with loss of physical liberty, there presumptively is no right to appointed counsel. Lassiter v. Department of Social Services, 452 U.S. 18, 26-27 (1981). Section 1915(e)(1) of Title 28 confers discretion upon the court to request counsel represent an indigent civil litigant. Mallard v. District Court, 490 U.S. 296 (1989).

In deciding whether to appoint counsel the court exercises discretion governed by a number of factors, including the

1 likelihood of success on the merits and the applicant's ability
2 to present his claims in light of their complexity. Weygandt v.
3 Look, 718 F.2d 952, 954 (9th Cir. 1983); see also, LaMere v.
4 Risley, 827 F.2d 622, 626 (9th Cir. 1987). Ordinarily the
5 presumption of regularity in the state's procedures suggests a
6 lack of likely success and counsels against appointment of
7 counsel. See Maclin v. Freake, 650 F.2d 885, 887 (7th Cir.
8 1981). As a general rule, the court will not appoint counsel
9 unless the applicant shows his claim has merit in fact and law.
10 Id. Even if the applicant overcomes this hurdle, the court will
11 not appoint counsel if the law is settled and the material facts
12 are within the plaintiff's possession, viz., they do not require
13 investigation outside plaintiff's place of confinement. Id. at
14 887-88.

15 Here, plaintiff alleges his constitutional rights were
16 violated when defendant revealed privileged materials and
17 testified against plaintiff in civil commitment proceedings.
18 There is, on the record before the court, no reason to believe
19 appointment of counsel would be of significant benefit.

20 Plaintiff's May 24, 2004, request for the appointment of
21 counsel therefore is denied.

22 So ordered.

23 Dated: May 10, 2005.

24 /s/ Peter A. Nowinski
25 PETER A. NOWINSKI
26 Magistrate Judge